

State Records Committee Meeting

Division of Archives
Courtyard Meeting Room
March 19, 2014
Salt Lake City, Utah

SRC APPROVED

Date April 10, 2014
SEM

Members Present: Marie Cornwall, Citizen Representative
Lex Hemphill, Chair, Media Representative
Doug Misner, History Designee
Ernest Rowley, Elected Official Representative
Patricia Smith-Mansfield, Governor's Designee

Participating by phone: Holly Richardson, Citizen Representative
Cory Vonberg, Petitioner
Michael Edwards, Iron County Attorney, Respondent

Legal Counsel: David Jones, Attorney General's Office
Paul Tonks, Attorney General's Office (for Corey Vonberg hearing)
Chiarina Bautista, Attorney General's Office

Executive Secretary: Susan Mumford, Utah State Archives

Others Attending: Susan Eisenman, Attorney General's Office
Teddie Bell, City of Bluffdale
Nate Carlisle, *The Salt Lake Tribune*, Petitioner
Rosemary Cundiff, Archives staff
William Jahsman, Self
Bruce Johnson, Utah State Tax Commission
Chad Lambourne, Petitioner
Samuel Packard, City of Bluffdale
Lynn Kenneth Packer, Petitioner
Vaughn Pickell, City of Bluffdale
Mark Reid, City of Bluffdale
Marilee Richins, Department of Administrative Services
Rebekkah Shaw, Archives staff
Catherine Taylor, Department of Human Services
Wanda Thiel, Self
Robert Thorup, City of West Jordan
Renee Wilson, Archives staff
Kendra Yates, Archives staff

Hearing –Nate Carlisle, *The Salt Lake Tribune* vs. City of Bluffdale

Mr. Hemphill welcomed the parties for the first hearing at 9:07 a.m. He explained the procedures to the parties. Vaughn Pickell represented the City of Bluffdale. Mark Reid and Teddie Bell were also from Bluffdale. Nate Carlisle, reporter for *The Salt Lake Tribune*, was the petitioner.

Opening – petitioner

Mr. Carlisle said the denial of records and the amount of the fee were the issues of the hearing. He said he believed Bluffdale was acting in good faith but that fees had been accumulated unnecessarily. A governmental entity could not charge for examining the records to determine if it was subject to disclosure and an hourly charge could not exceed the salary of the lowest paid employee with the skill and training to perform the request. Mr. Carlisle said an attorney's salary did not meet that criterion. The records he had requested were not federal records but belonged to the City of Bluffdale. Water usage records are not hidden in Utah. Water usage records in general are acknowledged to be public, but in this case have been denied because a federal agency has requested that they not be released. A letter from the National Security Agency (NSA) referred to a vague federal statute protecting the records from disclosure. The NSA has a right to weigh in as an interested third party but they are not the owners of the records. The NSA did not follow the proper procedures to protect the records. Bluffdale released over 100 pages of documents for which it charged \$767.45. An updated water contract between Bluffdale and the NSA was available for a fee of \$49.00 but not until the fees were paid for the earlier request. The records denied were daily water usage records for the NSA facility in Bluffdale.

Opening – respondent

Mr. Pickell said both the water usage records of a federal agency and the fees charged for Mr. Carlisle's first request are at issue. Water usage records are protected under Utah Code 63G-2-305(31). At the beginning of the contract between the NSA and Bluffdale, the NSA made it plain in a written certification that, as outlined in 50 USC of the federal statute, all the activities of the NSA are protected records. The Military Installation Development Authority (MIDA), a state agency, acting as an agent for the federal government, required that the records be protected. MIDA provided written certification of the authority to protect the records in May of 2013. The federal requirement to respect the activities and computing power of the NSA preempts local law. The fee was simply the cost of producing the records. A legal assistant went through approximately 500 pages of documents to determine which were responsive. The IT provider's cost was more than Mr. Carlisle was charged for the records. Mr. Carlisle was told the amount of the IT provider's charges. The written certifications were provided to Mr. Carlisle. The NSA Act says that nothing in the Act or any other law shall be construed to require the disclosure of the organization or the activities or any function of the National Security Agency or any information regarding the activities thereof (50 USC sec. 3605). Federal attorneys explained that the water usage could be used to interpret the computing power of the agency. Upon receipt of the second request from Mr. Carlisle, the fees were calculated and he was asked to pay the fee before the city processed the second request. The requests were voluminous and were provided to Mr. Carlisle before receiving any payment.

Testimony – petitioner

The City of Bluffdale got verbal instructions from the NSA to not release the water usage records. Mr. Carlisle said there were many ways water could be used in a building and there was no way to use the information to calculate the computing capacity of the agency. Mr. Carlisle said the public interest in water usage in Utah as well as the financial impact of selling Utah water was of public interest. Mr. Hemphill read from the NSA Act and asked how it could be interpreted to allow release of records if the records concerned the activities of the agency. Mr. Carlisle said that in the Tom Hayden case the NSA released a 20 page affidavit to protect the

records of the NSA. The records belong to the City of Bluffdale in that they originated with the city and are maintained by the city. Water billing is a public record. Utility lines were installed by the city and paid for by taxpayers. Charges for water are a tax by another name. Accounting for public dollars is part of the public interest in these records.

Testimony – respondent

Mr. Pickell said that on three different occasions written certification was provided to Mr. Carlisle of the protection of the records under federal law. The federal statute is very broad and protects the records of the NSA. The fee was determined by the voluminous quantity of records requested and by legal issues that required redactions. The records required extensive editing. Mr. Carlisle was charged the actual cost of producing the records. The NSA Act Section 6 of 50 USC 3605 says that nothing in this act shall require the disclosure of information about the organization of the agency, any function, or activities. Identity of employees and their private information had to be redacted from the records. Mr. Pickell said that after he had gone through some of the records, a law clerk was assigned to go through the rest of the records. The federal government asked that they have the final say about releasing the records. Tables of water usage projections were redacted because those records could be used to determine electrical power usage and computing power. Congress determined the records should be protected under federal law in order to protect national security. Three times in writing the NSA provided the basis of protecting the records to Mr. Carlisle. The records are protected under GRAMA as well as federal law. Ms. Smith-Mansfield asked if the invoices for water usage were maintained by the City of Bluffdale. Utah Code 63-2-305(31), she said, was quoted as a reason for withholding the records. That section refers to records provided by the United States with the requirement that they be managed as protected records. Ms. Smith-Mansfield said water usage records maintained by the city do not reveal any information about activities of the federal agency. A FOIA exemption would not apply to state records. She said the fact that water is used does not reveal any information about activities. Mr. Pickell said any information about activities of the NSA was covered by the broad scope of the NSA Act. Ms. Smith-Mansfield asked if Mr. Pickell's fee was based on going through the records to determine if they were responsive to the request. Mr. Pickell replied that his time and the time of the law clerk were spent in that activity. He said the water usage records were available and had been brought to the hearing. Mr. Pickell said the water was purchased wholesale from Jordan Valley Water Conservancy District. Bluffdale owned no water rights.

Closing statement – petitioner

Mr. Carlisle said that the water usage records would not jeopardize the security or safety of government property or governmental programs as cited in Utah Code 63G-2-305(12). The release of the records will not jeopardize any of the agency's activities. Water usage is money and sale of water is revenue for the state. That is why the records hold a high level of public interest.

Closing statement – respondent

Mr. Pickell said that Bluffdale could not release the records because the NSA records were protected by the NSA Act Section 6 as records related to the function and activities of the NSA. Laws of the United States are the supreme law of the land and supersede any state laws. The City of Bluffdale would like to be reimbursed for actual cost of providing records as it was a

broad request and the search for the records involved time and resources. If *The Salt Lake Tribune* did not have to pay for such a broad request, the result would be to encourage broad requests and the city would have to pay for fishing expeditions. Mr. Carlisle said he was not disputing the redactions already made in the records provided.

Deliberation

Ms. Smith-Mansfield made a motion that under Utah Code 63G-2-203(5) a governmental entity may not charge for reviewing the record to see if it is subject to disclosure but could charge for the actual cost of providing the records. The IT charges represent the actual cost and are the only appropriate fee. Doug Misner seconded the motion. Mr. Rowley said that public interest in the records was great and Utah has over-allocated its water. A governmental entity is encouraged to provide records without a fee when the public interest is involved. Water is a separate property right. It is the public's water. There is a great public interest in knowing how much water is used. Public interest in water use argues that the governmental entity is encouraged to disclose the records without a fee. Water is a unique property right in the State of Utah. Mr. Hemphill said that a governmental entity "may" provide a record without charge. Mr. Rowley said the city could be seen as unreasonable in its denial of a fee waiver. There was an overriding public interest in the records. A waiver of the entire fee could be warranted under Utah Code 63G-2-203(4). The IT charges of \$285.00 would stand, Mr. Hemphill said. The cost of providing the contract in the second request would also stand. The fee for the contract was \$49.50. Mr. Hemphill said that \$334.50 would be the total amount of the fee. Ms. Smith-Mansfield said that her motion was made on the principle that the city could not charge for reviewing the records to see if they were responsive to the request. The only appropriate charge for providing the records in the first request is the IT cost. A vote was taken. Mr. Rowley and Ms. Cornwall voted against the motion. Ms. Smith-Mansfield, Mr. Hemphill, and Mr. Misner voted in favor of the motion. The motion passed. Mr. Rowley said that water was a property right in Utah. At the time of statehood the federal government gave it up. The city purchases water and the state engineer distributes water, but water belongs to the state. Mr. Rowley made a motion that the water usage records are not protected under federal law but are public records pursuant to Utah Code 63G-2-201(2) and should be released. The motion was seconded by Ms. Smith-Mansfield. She added that no activity of the NSA was revealed as a result of releasing the water usage records. A vote was taken. The vote was unanimous in favor of the motion.

Second Hearing – Chad Lambourne representing Jessica Phillips vs. West Jordan

Mr. Robert Thorup represented West Jordan. Mr. Chad Lambourne represented Jessica Phillips. The parties introduced themselves. Mr. Hemphill reviewed the procedures for the hearing.

Opening – petitioner

Chad Lambourne, representing Jessica Phillips, had requested a copy of any video and audio recording from any officer who responded to the scene of the petitioner's DUI arrest on October 12, 2013, and any other records from the booking area in which Ms. Phillips was held. Mr. Lambourne said he had received the records as part of discovery from the prosecutor's office. No proper denial was received from West Jordan. Rather, the city declined to respond to the GRAMA request because of ongoing litigation between the city and the petitioner. The initial contact report is a public record and should be released to the petitioner in response to the GRAMA request. The record is a public record and not a protected record. Two different ways

exist for a person to obtain information: GRAMA and discovery. There is no law that states that a litigant is exempt from GRAMA.

Opening – respondent

Mr. Robert Thorup said the rules were ambiguous as to how to deal with subpoenas. The state rules of civil and criminal procedure applied in this case and trumped GRAMA. Every defense lawyer files for discovery. A full-time employee in West Jordan provides a response to all the discovery requests. A simultaneous GRAMA request duplicates the efforts of the city. GRAMA should not add additional burdens to the city. West Jordan has already produced the records. The records have been delivered and no charges were assessed. West Jordan believes a litigant could get records from the city through discovery and the rules of criminal procedure should not be circumvented by GRAMA requests. Duplication is the issue. The city fulfilled the discovery request and should not have to provide the records again in response to a GRAMA request.

Testimony – petitioner

The discovery process takes time. The GRAMA process is faster and the initial contact report can benefit the petitioner at a Driver License hearing by possibly providing exculpatory evidence. The GRAMA request and the discovery request were filed at approximately the same time. GRAMA was provided as a way for citizens to get records from government. Utah Code 63G-2-207 defines subpoenas and court ordered disclosure for discovery. A subpoena is not a GRAMA request and a judge can issue an order of restriction on the disclosure of records obtained through discovery. These are public records. There are two different ways to obtain information and a person should have the right to discovery as well as to a GRAMA request. Every person has right to inspect a public record and receive a copy. A prosecutor does not have to look for mitigating circumstances that might help a person accused of a criminal act. The GRAMA request was denied. The initial contact report is a public record and should not have been denied. The city manager denied the record because he said it was moot having already been released as part of discovery. The city did not follow GRAMA.

Testimony – respondent

Mr. Thorup said the law is ambiguous as to how to deal with subpoenas and discovery. GRAMA does not trump the rules of criminal procedure. Every attorney files discovery requests. Simultaneously requesting records from both sources causes a double burden on the city. The time spent by the records committee should not be used in a burdensome effort to produce a record that has already been produced. A GRAMA request is not discovery and the city owes no deference to how a request is made. It received the request twice and the record was provided through discovery.

Deliberation

Ms. Smith-Mansfield said when the GRAMA request was made the record had not been provided by the city through discovery. She made a motion that the record was a public record and should be provided. The records were not classified as other than public and were inappropriately denied. Pursuant to Utah Code 63G-2-301(3)(g), an initial contact report is a public record. According to the State Records Committee decision and order 04-17, Steed vs. Duchesne County, a record cannot be denied and the right to access is not impaired when a citizen files a law suit against the governmental entity that maintains the record. Mr. Misner

seconded the motion. The vote was unanimous in favor of the motion. Mr. Hemphill said an order would be sent within seven days to the parties.

Third Hearing – Lynn Kenneth Packer vs. Department of Administrative Services (DAS) and the Utah Attorney General’s Office (AG)

The parties introduced themselves. Mr. Lynn Kenneth Packer was the petitioner. Ms. Susan Eisenman represented the respondents: the Department of Administrative Services (DAS) and the Attorney General’s Office (AG’s Office). The two appeals by Mr. Packer were handled as a single hearing with Ms. Eisenman responding for both departments. Ms. Smith-Mansfield recused herself from the proceedings as an employee of DAS. Ms. Holly Richardson was contacted by phone to participate in this hearing.

Opening -- petitioner

Mr. Packer said the governmental entity’s denial of the records had been based on the statement that release of the records could endanger undercover investigators who were using the vehicles when investigating crimes. Mr. Packer used the example of a document mill. If a person is under investigation, he would look for signs of being investigated such as an unmarked car. A person’s name would not alert a person to an investigation and there would be no way to connect a person’s name with a certain car.

Opening – respondent

Ms. Eisenman said it was a straight forward case. The petitioner had made a records request and both responding entities; DAS and the AG’s Office had responded and provided records. The records requested included the make and model of vehicles driven by employees of the Utah Attorney General’s Office and by Department of Administrative Services, and license plate numbers of all assigned vehicles including undercover and investigative personnel. Identities of the undercover officers were redacted. If the names of the officers were published on Mr. Packer’s website, the effectiveness of their ability to investigate crime would be jeopardized. The records were classified as protected under Utah Code 63G-2-305(10), (11), and (12) because release could be expected to interfere with investigations, jeopardize the life or safety of an individual, or jeopardize the security of government property.

Testimony – petitioner

Mr. Packer distributed a copy of a Power Point slide presentation to the members of the committee. He was told undercover officers would be in jeopardy but the AG’s office had failed to show that any officer had worked undercover. It was the officers themselves who were suspected of violating rules in the use of state vehicles. He said the redactions of the names of officers appeared to be hypocritical because the AG’s Office had put investigators information out in the public in newspaper articles and awards ceremonies. See the attached PowerPoint presentation for a complete summary of Mr. Packer’s presentation.

Testimony – respondent

Ms. Eisenman said the two GRAMA requests to the two agencies were being answered as one. The Department of Administrative Services had relied on the Attorney General’s Office for the classification of the records. She said there is a difference between undercover and covert. She said the difference is made clear in the sworn affidavit about the function of the investigative

officer in exhibit "L" in the documentation. Release of the records could reasonably be expected to jeopardize the effectiveness of an investigation. A police officer is always in danger. In putting themselves in the path of a criminal element, many dangerous assignments are undertaken. GRAMA does not require an agency to increase the danger by putting together a list and posting it in a public forum. A law enforcement agency should be the one to determine which officers can be known. Releasing names and images of officers in covert or undercover work can jeopardize investigations by revealing techniques and vehicles. The ability to do the job of the AG's Office is compromised if such information is given out. A large amount of records was released to Mr. Packer. He received records that would not compromise the officers or their investigations. The identifying numbers of each car and mileages were released. The identity of officers and the license numbers of the cars were redacted. The decision of the committee does have an effect to put officers at risk. Decisions by the SRC can affect the safety of officers in the future.

Closing – petitioner

The request for records was an effort to reveal that government workers were using vehicles provided by the taxpayers at a loss to taxpayers of hundreds of thousands of dollars. The State Auditor's Office filed a report on vehicle use and abuses but denied to release the protected information.

Closing – respondent

The officers in the AG's Office deserve credit for their work and also deserve protection. The AG's Office should not be required to put the officers at risk. Ms. Eisenman said the names of officers who are not currently involved in covert or undercover work are available to Mr. Packer and could be released.

Deliberation

Mr. Rowley said the issue is much like the issues dealt with in hearings involving Corrections. The laws of the state favor police officers even in normally public records. Undercover officers can protect their own private records. Mr. Rowley made a motion that the records were properly classified as protected pursuant to Utah Code 63G-2-305(10),(11), and (12).

There is a specific set of statutes to protect records. Even the auditor's report protected officers' names. The motion was seconded by Mr. Misner. There are some records already agreed upon that will be released. A vote on the motion was unanimous in favor of the motion. Ms.

Richardson registered her vote in the affirmative. Mr. Hemphill said the committee was not inclined to use the weighing provision and that an order would be sent within seven days.

Break for lunch

Hearing – Corey Vonberg vs. Iron County

At 1:15 p.m. calls were made to Michael Edwards, Iron County Attorney, and to Corey Vonberg at the Utah State Prison. Ms. Smith-Mansfield rejoined the committee for this hearing. Ms. Richardson was no longer participating by phone. Mr. Hemphill greeted the parties contacted by phone for the hearing. Corey Vonberg introduced himself as the petitioner. Michael Edwards represented Iron County.

Opening -- petitioner

Corey Vonberg, the petitioner, said he still did not have the information he had requested. He had the motion he had requested but wanted to know the amount of money that had been paid to Mr. Keith, the informer.

Opening – respondent

Mr. Edwards said the GRAMA request had not included a request for an amount of money. It seemed that the hearing and the appeal did not seem to be about the record since Mr. Vonberg already had the record he had requested. It was a 2002 case file. Mr. Vonberg said he wanted a motion to amend probation for someone who was a confidential informant. When Iron County responded that they did not maintain such a document and referred Mr. Vonberg to the court, Mr. Vonberg responded that a document did exist and he sent a copy of the first page of the document to Iron County. Since the record did exist a hearing could not be denied. There is no record that shows the compensation given to Mr. Keith other than a three-day early release.

Testimony – petitioner

Mr. Vonberg said he had even given the case number for the record he requested and it was still denied. He doubted that there was not a record for the payment of money to Mr. Keith. He said Mr. Edwards's bosses know about the case, but Mr. Edwards claims ignorance. The original request did not include the compensation amount but in the appeal Mr. Vonberg said he had mentioned the compensation. He said he would like to be referred to somewhere he could get the record of compensation.

Testimony – respondent

Mr. Edwards said his office maintained no records on a confidential informant from the years 2002 or 2004. Drug cases and narcotics task forces used confidential informants. A more accurate label for Mr. Keith would be a jail house informant. No record of a confidential informant receiving payment exists. The requested record has been provided. Even though he did not know the record existed, when he found out it did, Mr. Edwards requested the record from the court and provided it to the petitioner.

Deliberation

The original request did not contain a request for an amount of money. The court record of the motion was in 2004. If Mr. Keith had been a confidential informant before that date, a record retention schedule for the county would account for such a record. Based on the information provided, the respondent has indicated that they do not have the record. Mr. Rowley made a motion that no record responsive to the request was maintained by Iron County, and no record could be ordered to be released by the committee. A vote on the motion was unanimous in the affirmative that no record exists. An order will be sent to the parties within 7 days.

Approval of February 2014 SRC Minutes

A correction of a statement in the minutes was made by Ms. Smith-Mansfield. With the correction and a clarification, Ms. Smith-Mansfield made a motion to approve the minutes as amended. Ms. Cornwall seconded the motion. The vote to approve the minutes was unanimous.

Appeals to the State Records Committee

Ms. Mumford reported on the appeals received during the month. See the attached document.

Cases in District Court

Mr. Tonks reported on cases in District Court. See attached document.

A motion to adjourn was made by Mr. Rowley

Adjournment at 2:15 p.m.

STATE RECORDS COMMITTEE MEETING
Wednesday, March 19, 2014
9:00 a.m.
AGENDA

HEARINGS

1. **Nate Carlisle, Tribune vs. Bluffdale City.** Mr. Carlisle is appealing the denial of records of water usage at the NSA facility, correspondence to or from the NSA.gov domain. He is requesting a fee waiver for the records.
2. **Jessica Phillips vs. West Jordan Police Department.** Ms. Phillips is appealing the denial of an audio and video report made during her detention and arrest.
3. **Lynn Kenneth Packer vs. Attorney General's Office.** Mr. Packer is appealing the partial denial of records related to employee use of fleet vehicles.
4. **Lynn Kenneth Packer vs. Department of Administrative Services.** Mr. Packer is appealing the denial of information maintained by Fleet Operations, a division of Administrative Services.
5. **Corey Vonberg vs. Iron County.** Mr. Vonberg is appealing the denial of a motion filed by Iron County in which Shawn R. Keith is identified as a confidential informant.

BUSINESS

Approval of February 13, 2014, SRC Minutes, action item

SRC appeals received

Cases in District Court

Other Business

**SRC Appeals Received
March 2014**

1. **14-05 Lynn Packer vs. Attorney General's Office.** Mr. Packer is appealing the partial denial of records of the use of state vehicles. Hearing scheduled for March
2. **14-06 Lynn Packer vs. Department of Administrative Services.** Mr. Packer is appealing the partial denial of information about fleet services and vehicles. Hearing scheduled for March
3. **14-09 Jessica Phillips vs. West Jordan Police Department.** Ms. Phillips is appealing the denial of an initial contact report including a video and audio record. Hearing scheduled for March
4. **14-11 Suzanne Jansen vs. University of Utah.** Ms. Jansen is appealing the partial denial of a request for records related to her termination of employment. Hearing scheduled for March Canceled.
5. **14-12 Corey Vonberg vs. Iron County.** Mr. Vonberg is appealing the denial of a record he believes to be maintained by the county. Hearing scheduled for March
6. **14-14 Nate Carlisle, Salt Lake Tribune vs. Bluffdale City.** Mr. Carlisle is appealing the denial of records from the city and what he considers excessive fees. Hearing scheduled for March.
7. **14-15 Wanda Thiel vs. Judicial Conduct Commission.** Ms. Thiel is appealing the denial of records resulting from a complaint she made. Hearing to be scheduled for April
8. **14-16 Damon Crist vs. UDC.** Mr. Crist is appealing extraordinary circumstances but a specific request is required rather than a general complaint. No hearing scheduled until complete.
9. **14-17 Chad Lambourne vs. Provo City.** Mr. Lambourne, on behalf of a client is appealing the denial of video and audio records of the arrest and booking of the client. Provo City has a separate GRAMA ordinance and the SRC has no jurisdiction. Hearing denied for no jurisdiction
10. **14-19 Matthew Piper, Salt Lake Tribune vs. University of Utah.** Mr. Piper is appealing the denial of records of the investigation of Thomas Ray Lippett, a former employee of the University. Hearing scheduled for April
11. **14-20 Sam Allen vs. Eagle Mountain.** Mr. Allen is appealing the denial of a fee waiver for records. Hearing scheduled for April

12. **14-21 Ken Cromar vs. City of Cedar Hills.** Mr. Cromar is appealing the denial of a fee waiver for requested records. Hearing postponed until May
13. **William Sherratt vs. UDC.** Mr. Sherratt is appealing the denial of records of his housing moves within the prison. He is also appealing denial of a fee waiver but has been asked to first access his 100 free pages. The committee has heard the issue of records of moves within the prison and has ruled the records protected. The free 100 pages are available to an inmate before he requests a fee waiver. No hearing scheduled
14. **14-23 Tracy J. Ercanbrack vs. Public Safety.** Mr. Ercanbrack is appealing the denial of a video from the Highway Patrol. Resolved between parties
15. **14-24 Chad Lambourne vs. West Jordan.**
16. **14-25 Stephen Wale vs. Utah Risk Management Mutual Association. (URMMA)** Mr. Wale is appealing the denial of URMMA general liability, property and auto physical damage policies. To be scheduled for April
17. **14-26 Justin Crosbie vs. Adult Probation and Parole.** Mr. Crosbie is appealing the denial of cell phone records of his former parole agent.

March 2014 Records Committee Case Updates

District Court Cases

Firstwest Benefit Solutions LLC v. Orem City, 4th Judicial District, Utah County, Case No. 140400007, Judge McVey, filed January 2, 2014.

Current Disposition: Orem City and the Committee have filed Motions to Dismiss. Oral argument scheduled for March 31, 2014 in Provo for both motions.

Salt Lake City v. Jordan River Restoration Network, 3rd Judicial District, Salt Lake County, Case No. 100910873, Judge Stone, filed June 18, 2010.

Current Disposition: Parties have filed answers to interrogatories and discovery period continuing.

Appellate Court Cases

Attorney General Office. v. Schroeder, Court of Appeals Case No. 20121057.

Current Disposition: Case has been transferred and certified to the Utah Supreme Court as of January 31, 2014. Appellee (Attorney General Office) appellate brief is due to be filed on March 10, 2014.

Salt Lake City Corp. v. Mark Haik, Court of Appeals Case No. 20130383.

Current Disposition: Oral argument set for June 30, 2014.

Packer GRAMA Appeal

Utah State Records Committee

March 19, 2014

Packer Appeal Summary

- Redacted Attorney General Investigator Trip Logs which conceal identity of investigators and vehicles should be un-redacted.
- The redacted information was improperly classified as protected.
- After the improper classification there was inadequate balancing when the AG concluded the private interest outweighs the public interest.

Log Example (p. 41 AG Response)

Utah Attorney General
Investigations Division
Vehicle Mileage Report

Investigator: [Redacted] → Name redacted

Vehicle: [Redacted] → Vehicle redacted

Beginning mileage: 11,000

Ending mileage: 11,729

From: Oct 1, 2013

To: Oct 31, 2013

Total business miles: 1,716.2

Total personal miles: 51

Personal Use Payment Schedule

[Redacted] → Formula redacted
(Later provided)

3

AG's Case

(Susan Eisenman, Appeals Officer)

- Point 19: "Identifying the names of the investigators and the make, model or license plate numbers of the cars they drive would endanger the officers, exposing them to threats of harm and actual harm. (Exhibit J.)"
- Point 20: "Identifying the cars driven by Attorney General investigators could reasonably be expected to interfere with investigations undertaken by the office, including current investigations...and future investigations." (And "damage to the vehicle by those seeking to impeded an investigation." Point 21.)
- Page 5: The public interest in receiving this information does not outweigh the privacy interest.

AG's Previous Undercover Claim (Eisenman)

- "names of undercover officers" and "Information that would identify undercover vehicles."
- "It is reasonable to assume there are those who would harm either the officer or the car, if the person knew that they were the target of an undercover investigation, and could identify the officer an or the vehicle."

5

No Undercover Proof

Not only did the AG's Office fail to prove all officers have or could work undercover...

...they also cannot point to a single instance where any one of its officers has ever worked undercover, even once.

The false *undercover* argument vanished and was replaced with the claim *all* investigators would be endangered and exposed "to threats of harm and actual harm."

6

Ms. Eisenman cited case law that is off point: *In re Albuquerque Pub. Co:*

- ...the DEA explained that "In a covert capacity, these individuals 'routinely approach and associate' with 'known violators,' many of whom are armed and 'have known violent tendencies.'"

After weeks of inquiry the AG's office still cannot cite a single incident of its agents working covertly.

7

Not one of her cited, federal cases is on point

None involved officers who were suspected of violating rules and laws, where the public right and need to know far outweigh any imagined private interest.

8

There is neither proof nor plausible argument to support the AG's claim.

- Ms. Eisenman provides no *hypothetical* example of a suspect reading a name in a news story and connecting it with someone surveilling him or her.
- Ms. Eisenman provides no *actual* example from Utah or anywhere in the United States of a suspect using a news article to harm or kill an investigator. *(Despite hundreds if not thousands of investigator names being exposed to the public via news articles and court filings.*

9

Ms. Eisenman's new proof: Statements by Ken Wallentine and Wade Carpenter



10

Ken Wallentine Affidavit

Exhibit J, pp. 133-136

10. Identifying the names of the investigators and which cars they drive would endanger the officers, exposing them to threats of harm and/or actual harm.

Identifying the cars would also reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders not generally known outside of government and would interfere with enforcement.

12. Identifying the cars driven by Attorney General investigators could reasonably be expected to result in damage to the vehicle by those seeking to impede law enforcement investigations.

11

Chief Carpenter Letter

Exhibit K pp. 137-138

Identifying the names of the investigators and describing the cars that investigators drive would endanger the officers and other suspects, exposing them to threats of harm and/or actual harm.

Finally, if the Records Committee determines that law enforcement agencies must make records public that would identify officers and would describe the unmarked cars used for investigations, that information could reasonably be expected to interfere with investigations undertaken throughout the State. Criminal suspects will undoubtedly inform each other about the ability of this information, and use it to thwart criminal investigations, interfere with police activities and harm officers or the vehicles.

12



No Full Disclosure about Affiant

Ms. Eisenman should have disclosed Wallentine's biases:

- It is very likely his is one of the redacted names.
- It is very likely he is among those again vehicles who violated the law and administrative rules.
- It is very likely he has engaged in cronyism in hiring investigators.

13

It is Unreasonable not Reasonable Investigator Names

- How reasonable is it that a suspect would ever see the *name* of a investigator in a news article?

Very unlikely but possible.

- How reasonable or likely the suspect would then connect that name to an actual officer involved with surveillance?

Extraordinarily unlikely. Perhaps one in millions.

- Finally, how likely, after ID'ing the investigator, that the suspect will decide to hurt or kill him?

One in many, many millions.

14

It is Unreasonable not Reasonable Vehicle Descriptions

- How reasonable is it that a suspect would ever see the a description of an AG *vehicle*—such as 2012 Toyota Camry — in a news article?

Very unlikely but possible.

- How reasonable or likely the suspect would then connect a Toyota Camry to an actual officer involved with surveillance? (*More than 200,000 sold in the U.S. in 2012*)

Extraordinary unlikely. Perhaps one in a million.

- Then how likely, recognizing the vehicle, decide to damage the vehicle and/or evade surveillance?

One in many millions.

15

Conclusion

There is no reasonable basis to assign protected status to investigator names and vehicles.

16

The AG's Argument is not only without merit, it is also hypocritical.

The AG's Office itself, for years, has facilitated the names and images of its investigators being widely disseminated, via press conferences, AG-sanctioned media interviews, YouTube videos posted by the AG's office and court filings.

17

First, This question:

- Is it more likely a dangerous suspect would be able to detect an investigator, who is surveilling him or her, by having seen his or her name in a news article or by having seen a photo or video of the investigator?

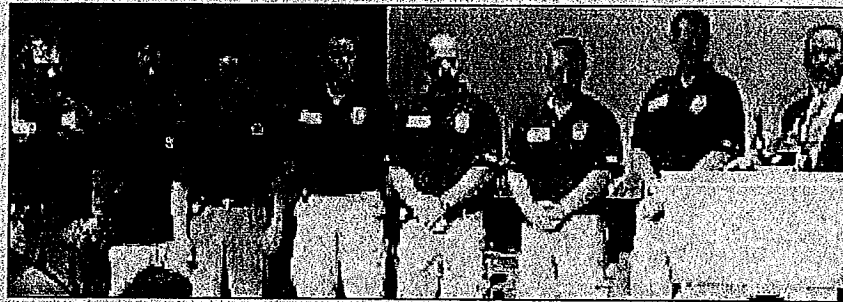
• Reading the name → Brady Fitzpatrick
Virtually impossible.

• Seeing the face. →
More likely.



18

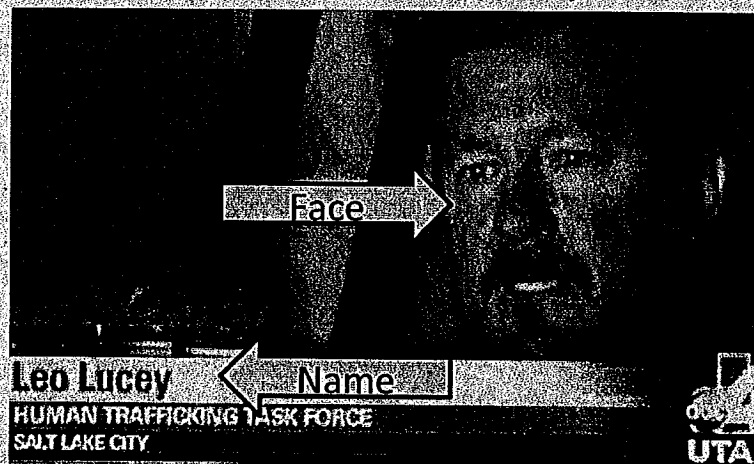
Fox 13 Televised Report



Utah AG ICAC Investigators, several wearing prominent name tags during a photo op.

19

KTVX News Story



Leo Lucey SECURE Strike Force; shown & named

20

SECURE Strike Force video posted on AG's own web site and YouTube



21

AG's SECURE/ICAC Task Force *More Photo Ops*



22

Deseret News photo and caption
April 2008



Agent Coy Acocks, left, of the Internet Crimes Against Children Task Force, escorts Curtis Scharman out of his Herriman home.

23

Vehicles are often shown



24

Shurtleff Strike Force Press Conference



Press conference staged by then Attorney General Mark Shurtleff.

25

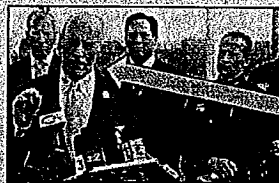
Remember Chief Carpenter's Letter? *He outed an agent on television.*



Davis Strike Force Officer shown and named during Chief Carpenter's press conference.

26

Remember Ken Wallentine's Affidavit? *He outed an agent on television.*



Ken Wallentine at the scene of an arrest where he exposes himself, his name, other officers, and their vehicles to purported danger by allowing himself, his officers and their vehicles to be videoed by an invited television news cameraman.

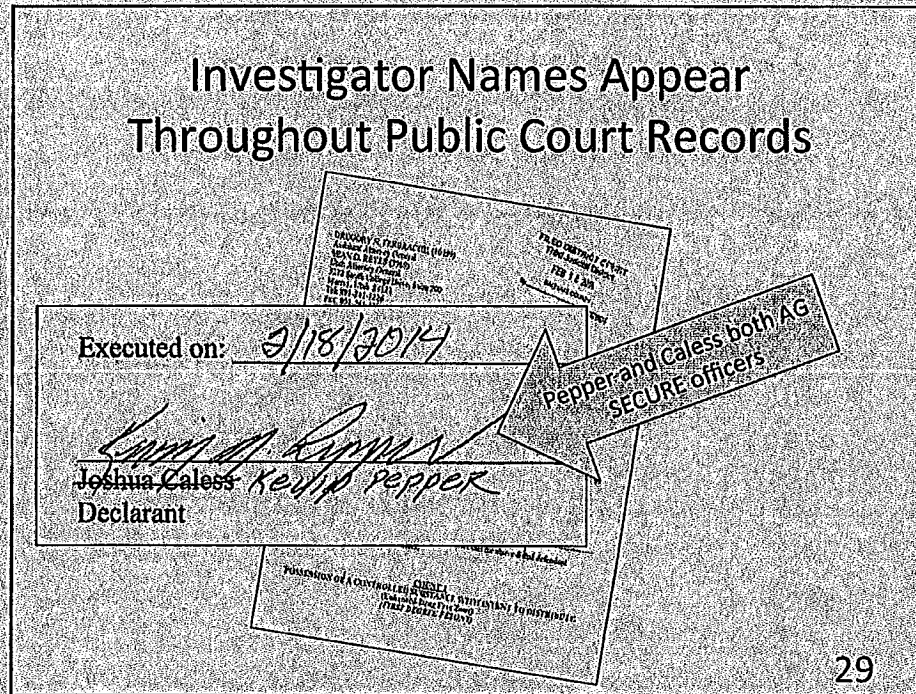
27

Salt Lake Tribune Series on Child Porn and ICAC 2010 (Peg McEntee column)

- Named names of AG officers:
 - Jessica Farnsworth, AG Internet Crimes Investigations
 - Rhett McQuiston, Medicaid and ICAC
 - Mark Bunham (SLCPD)
 - Coy Acocks, AG special agent
 - Dave Artis, ICAC
 - Steve Gamvroulas, AG ICAC Task Force
 - Jeff Ross (FBI)

28

Investigator Names Appear Throughout Public Court Records



Since Ms. Eisenman filed her response.
Feb. 11, 2014, Fox 13



Deseret News v. Salt Lake County
Utah Supreme Court Case (2008)

- “GRAMA does not contemplate adversarial combat over record requests. It instead envisions an impartial, rational balancing of competing interests.”
- GRAMA law favors “access, and its mandate (is) that when competing interests fight to a draw, disclosure wins.”

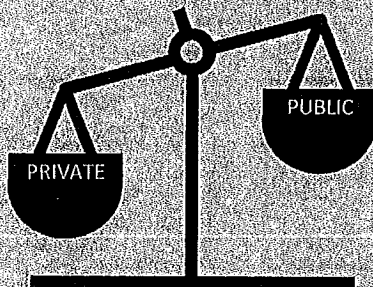
31

Balancing the Packer GRAMA Request

- The names and vehicles should not have been classified as protected.
- But they were, even if in error.
- The next step was to balance private versus public interest.
- Any private interest favoring secrecy is substantially outweighed by public interest favoring disclosure

32

Ms. Eisenman's Deficient Balancing:



"The public interest in receiving this information does not outweigh the privacy interests, and Mr. Packer is not entitled to the protected portions of the record."

33

Why Her Balancing Attempt Failed

- Ms. Eisenman ignored pro-public interest factors I raised with the AG's Office.
- She refused requests to discuss balancing directly with her.
- She ignores the vehicle audit.

34

Issues of Public Importance Raised with Missy Larsen, AG Spokeswoman

- The question whether officers and vehicles were really used in undercover operations.
- Questions about officers' failures to log personal mileage as required by law.
- Ken Wallentine's deception in 2007: His not disclosing to the legislature that unauthorized personal use was being made of vehicles prior to legislation permitting it.
- Afterwards the AG's office permitted more vehicles to be used for personal use than authorized by law.
- That cronyism was suspected to have been involved with the hiring of many investigators.

35

Ombudsman Rosemary Cundiff Email

December 9, 2013

Lynn and Susan,

This is a brief confirmation of my conversations with both of you this morning.

Lynn requested that I arrange a teleconference today to discuss his records request and appeal.

Susan wishes to delay conversations about the appeal until after she has had time to formally respond.

36

Packer to Eisenman Email

Dec. 12, 2013 after redacted records were produced and she accidentally provided some officer names.

About the investigators whose names were disclosed in the records you produced. So far evidence that supports their fear for their safety is nonexistent. So far I have not found anything to support the contention that any law enforcement officers, either under Wallentine or Steed, have worked or are working undercover where true danger does exist.

So far...it appears that the *undercover* argument is bogus and is being used to cover up unethical behavior perhaps even crimes they may be committing. You are free to buy the undercover argument and withhold and redact accordingly. I am free to appeal those decisions and pursue facts that show the officers may be violating state laws and rules and the federal income tax law.

I am investigating the AG's office's policies as well as the conduct of past and current employee which include Shurtleff, Swallow, Torgensen, Wallentine, their investigators and others.

37

The Auditor's Report and an internal memo provide more support for public disclosure

38

Auditor's Report Points to Matters of Public Importance Involving Investigators

- Trip logs inadequately maintained.
- Required call-out logs not maintained.
- Ten of 35 vehicles used mostly for commuting.
- Ten vehicles being used for personal use without legislative authorization.
- Personal use reimbursement excessively low.
- AG chief deputy and a division chief assigned vehicles without justification.

39

A Leaked, Internal Report by AG Reyes' Transition Team, March 5, 2014

This is not the Investigator General's Office. Investigators should not have sway or authority when it comes to making legal decisions.

Investigators should not be housed with attorneys. Working in the same building blurs the lines between the roles of investigators and the roles of attorneys.

Investigations should not be a separate division. Investigators should be accountable to attorneys, not other investigators.

The office should not hire investigators with a history of poor performance and disciplinary actions. In particular, the office should not hire investigators who have been dismissed from other agencies.

40

Reyes on Transparency

- *Deseret News*: Reyes in a speech at the ceremony in the Capitol rotunda had promised his administration would be transparent.



- Reyes, during his campaigns, promised the "highest degree of transparency in the AG's office" and "an Open Door policy"

41

My Experience

- I have made and continue to make GRAMA requests of the AG's office, governor's office, Department of Administrative Services, Auditor's office and legislature.
- Attorney General Reye's abuse of GRAMA to restrict access is the worst among those I have encountered and far worse than under Swallow.

42

New AG Press Policy

March 17, 2014

All communications with media, or those claiming to be media, concerning the Attorney General's Office including policies, personnel, cases or any other UAG business that take place outside of this system are subject to immediate disciplinary actions up to and including termination.

43

CONCLUSION

AG'S DESIGNATIONS SHOULD BE
REVERSED

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